

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

WASHINGTON TOXICS COALITION,  
et al.,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF  
THE INTERIOR, et al.,

Defendants,

and

CROPLIFE AMERICA,

Intervenor-Defendant.

No. 2:04-cv-01998-JCC

INTERVENOR-DEFENDANT  
CROPLIFE AMERICA'S REPLY TO  
PLAINTIFFS' RESPONSE TO  
MOTION TO INTERVENE OF  
WASHINGTON FRIENDS OF  
FARMS AND FORESTS, ET AL.

Note on Motion Calendar:  
Friday, January 14, 2005

Intervenor-Defendant CropLife America ("CLA") hereby replies to Plaintiffs' response to the motion to intervene of Washington Friends of Farms and Forests, et al. ("WFFF"). The response qualifies Plaintiffs' previous nonopposition to WFFF's intervention by asking that intervention be conditioned on CLA's sharing its page limits or briefing jointly with WFFF. Resp. at 2. These constraints are unacceptable to CLA for several reasons:

1. Plaintiffs' underlying assertion that CLA's interests in this suit are "entirely aligned" with WFFF's is wrong. CLA is the nationwide organization representing the major

1 manufacturers, registrants, formulators, and distributors of crop protection and pest control  
2 products. *See* CLA Mot. to Intervene at 4. This lawsuit challenges a set of regulations that are  
3 designed to facilitate compliance with the Endangered Species Act (“ESA”) in the *registration* of  
4 pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (“FIFRA”).<sup>1</sup> Pesticide  
5 registrations are licenses. CLA’s members hold, and in the normal course will apply for, such  
6 licenses. Unlike *users* of pesticides, CLA’s members directly participate in, and depend on, the  
7 registration process in order to market their products. They have invested tens of millions of  
8 dollars in research and testing of their products to that end. They, not the end-users in the WFFF  
9 intervenor group, have an interest in protecting those investments and in minimizing the regulatory  
10 burdens on registrants through improved integration of registration/reregistration under FIFRA  
11 with compliance with § 7(a)(2) of the ESA. *See* CLA Mot. to Intervene at 6-8.

12         2.       The WFFF intervenors, in contrast, are a diverse group of organizations whose  
13 members *use* pesticide products in their businesses, mainly to protect agricultural crops. *See*  
14 WFFF Mot. to Intervene at 1-7. Besides not being direct participants in FIFRA registration  
15 proceedings, the WFFF intervenors have interests of their own that CLA does not represent in  
16 this case. For example, their intervention motion identifies interests in specific crops or uses  
17 (potatoes, wheat, hops, tree fruit, dairies, golf courses); specific locales (Idaho, Washington, the  
18 Pacific Northwest); and related economic and social impacts on local communities, employment,  
19 and the like. *See* WFFF Mot. at 1-7. Those interests, while important, are distinct from CLA’s  
20 and merit briefing in their own right.

21         3.       Plaintiffs are mistaken that the relief they seek “would affect pesticide makers and  
22 users in the same manner.” *See* Resp. at 3. If the joint counterpart regulations were invalidated  
23

---

24         <sup>1</sup> *See, e.g.,* Compl. ¶¶ 30-49 (summarizing registration process and its alleged failure to comply with  
25 the ESA); *id.* ¶¶ 61-71 (describing EPA’s overview of its ecological risk assessment process for pesticide  
26 registrations, and the evaluation of that process by the Fish and Wildlife Service and the National Marine  
Fisheries Service).

1 and set aside, CLA's members would face *legal impediments* to manufacturing and selling their  
2 products. Pesticide registration would continue to be bogged down in a process that fails to take  
3 advantage of EPA's information and expertise on the effects of pesticides on the environment and  
4 that is prey to lawsuits by these Plaintiffs and others. *See* CLA Mot. at 3-4. In contrast, the  
5 impact on *users* will be more oblique: they might have practical problems growing their crops  
6 without pesticide products, but they would not face legal impediments as CLA's members would.  
7 *See, e.g.,* WFFF Mot. at 3 (noting that Washington potato farmers "rely on crop protection  
8 products only when and where necessary" and "utilize disease-resistant potato varieties to reduce  
9 reliance" on pesticides); *id.* at 6 (referring to use of "nonpesticide tools" for hop crops).

10 4. Plaintiffs' desire to exact a pound of flesh from CLA as the price for WFFF's  
11 intervention overlooks a very simple and equitable solution to their need to respond to arguments  
12 from three groups of defendant-side parties. Plaintiffs, the Federal Defendants, and CLA have  
13 filed a joint proposed order (Dkt. No. 25) that would allow each of those parties to file an  
14 opening summary judgment brief of up to 50 pages and a reply brief of up to 25 pages. CLA  
15 believes that those page limits are appropriate and essential to enable CLA to present its own  
16 arguments effectively. If, upon reviewing the briefs that are filed, Plaintiffs believe they need an  
17 enlargement of their page limits, they can do what they did (without any opposition from CLA) in  
18 the Ninth Circuit appeal in the allegedly related case where intervenors were separately  
19 represented – request it from the Court.<sup>2</sup>

20 5. Moreover, CLA should not be required to file joint briefs with the WFFF  
21 intervenors, as Plaintiffs suggest in the alternative. Joint briefing would unnecessarily burden CLA  
22 and the WFFF intervenors with expending additional time and resources to coordinate drafting,  
23 client review, final preparation, etc. Moreover, as seen in the post-injunction briefing in this Court  
24

---

25 <sup>2</sup> *See* Motion for Enlargement of Size of Appellees' Brief (July 12, 2004) in *Washington Toxics*  
26 *Coalition v. EPA*, Nos. 04-35138, et al. (consolidated) (9th Cir.).

1 in *Washington Toxics Coalition v. EPA*, No. 01-0132-JCC, as well as the Ninth Circuit  
2 briefing on appeal, two separately represented intervenors in that case who are among the  
3 proposed WFFF intervenors here (the Washington State Farm Bureau and the Washington State  
4 Potato Commission) have a distinct agenda that CLA does not purport to advance. As that  
5 experience suggests, requiring CLA to brief jointly with those intervenors, in addition to increasing  
6 costs, would create substantive problems in compromising distinct interests and briefing strategy,  
7 and would diminish CLA's ability to better inform the Court's decision on issues of first  
8 impression.

### 9 CONCLUSION

10 CLA represents the distinct interests of pesticide manufacturers, registrants, formulators,  
11 and distributors. Therefore, the WFFF intervenors' participation in this case should not be  
12 conditioned on a reduction in CLA's page limits or on the filing of joint intervenors' briefs.

13 Respectfully submitted,

14  
15 LEARY FRANKE DROPPERT PLLC

CROWELL & MORING LLP

17 J.J. Leary, Jr. (WSBA No. 08776)  
18 1500 Fourth Avenue, Suite 600  
19 Seattle, WA 98101  
(206) 343-8835

s/ J. Michael Klise  
J. Michael Klise (*pro hac vice*)  
jmklise@crowell.com  
Steven P. Quarles (D.C. Bar No. 351668)  
Thomas R. Lundquist (D.C. Bar No. 968123)  
1001 Pennsylvania Ave., N.W.  
Washington, DC 20004  
(202) 624-2500

20 Dated: January 12, 2005

21  
22 Attorneys for Intervenor-Defendant CropLife America  
23  
24  
25  
26